

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
)	
TCT Mobile Ltd.,)	File No. EB-09-SE-151
a subsidiary of TCL Communication Technology)	NAL/Acct. No. 201032100013
Holdings Ltd.)	FRN 0009221672

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: January 14, 2010

Released: January 14, 2010

By the Chief, Spectrum Enforcement Division, Enforcement Bureau:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”), we find that TCT Mobile Limited (“TCT Mobile”) apparently willfully and repeatedly violated Section 20.19(i)(1) of the Commission’s Rules (“Rules”), which requires the filing of status reports regarding the hearing aid compatibility of wireless handsets.¹ We also find that TCT Mobile apparently willfully violated a Commission order by failing to respond to a Letter of Inquiry (“LOI”) from the Enforcement Bureau. Based on our review of facts and circumstances in this matter, we conclude that TCT Mobile is apparently liable for a forfeiture in the amount of \$16,000.

II. BACKGROUND

2. In the 2003 *Hearing Aid Compatibility Order*, the Commission adopted several measures to enhance the ability of individuals with hearing disabilities to access digital wireless telecommunications.² The Commission established technical standards that digital wireless handsets must meet to be considered compatible with hearing aids operating in acoustic coupling and inductive coupling (telecoil) modes.³ The Commission further established, for each standard, deadlines by which manufacturers and service providers were required to offer specified numbers or percentages of digital wireless handsets per air interface⁴ that are compliant with the relevant standard if they did not come

¹ 47 C.F.R. § 20.19(i)(1).

² The Commission adopted these requirements for digital wireless telephones under the authority of the Hearing Aid Compatibility Act of 1988, codified at Section 710(b)(2)(C) of the Communications Act of 1934, as amended, 47 U.S.C. § 610(b)(2)(C). See *Section 68.4(a) of the Commission’s Rules Governing Hearing Aid-Compatible Telephones*, Report and Order, 18 FCC Rcd 16753, 16787 ¶ 89 (2003); Erratum, 18 FCC Rcd 18047 (2003) (“*Hearing Aid Compatibility Order*”); Order on Reconsideration and Further Notice of Proposed Rulemaking, 20 FCC Rcd 11221 (2005) (“*Hearing Aid Compatibility Reconsideration Order*”).

³ See *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16777 ¶ 56; 47 C.F.R. §§ 20.19(b)(1) and (2).

⁴ The term “air interface” refers to the technical protocol that ensures compatibility between mobile radio service equipment, such as handsets, and the service provider’s base stations. Currently, the leading air interfaces include Code Division Multiple Access (CDMA), Global System for Mobile Communications (GSM), Integrated Dispatch Enhanced Network (iDEN) and Wideband Code Division Multiple Access (WCDMA) a/k/a Universal Mobile Telecommunications System (UMTS).

under the *de minimis* exception.⁵ In February 2008, as part of a comprehensive reconsideration of the effectiveness of the hearing aid compatibility rules, the Commission released an order that, among other things, adopted new compatible handset deployment benchmarks beginning in 2008.⁶

3. Of primary relevance, the Commission also adopted reporting requirements to ensure that it could monitor the availability of these handsets and to provide valuable information to the public concerning the technical testing and commercial availability of hearing aid-compatible handsets, including on the Internet.⁷ The Commission initially required manufacturers and digital wireless service providers to report every six months on efforts toward compliance with the hearing aid compatibility requirements for the first three years of implementation (May 17, 2004, November 17, 2004, May 17, 2005, November 17, 2005, May 17, 2006 and November 17, 2006), and then annually thereafter through the fifth year of implementation (November 19, 2007 and November 17, 2008).⁸ In its 2008 *Hearing Aid Compatibility First Report and Order*, the Commission extended these reporting requirements with certain modifications on an open ended basis, beginning January 15, 2009.⁹ The Commission also made clear that these reporting requirements apply to manufacturers and service providers that fit within the *de minimis* exception.¹⁰

4. Commission records, however, indicate that no hearing aid compatibility status reports have been filed for TCT Mobile, a wireless handset manufacturer.¹¹ Accordingly, the Wireless Telecommunications Bureau (“WTB”) referred TCT Mobile’s apparent violation of the hearing aid compatibility reporting requirements to the Spectrum Enforcement Division (“Division”) of the Enforcement Bureau.

5. On September 30, 2009, the Division issued TCT Mobile an LOI directing the company to provide, within thirty calendar days from the date of the letter, certain information and documents regarding the company’s compliance with the reporting requirements of Section 20.19(i)(1) of the Rules.¹² Copies of the LOI were sent to both TCT Mobile and its corporate parent, TCL Communication Technology Holdings, Ltd., via Federal Express. The copy sent to the address on file at the Commission

⁵ See *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16780 ¶ 65; 47 C.F.R. §§ 20.19(c), (d). The *de minimis* exception provides that manufacturers or mobile service providers that offer two or fewer digital wireless handset models per air interface are exempt from the hearing aid compatibility deployment requirements, and manufacturers or mobile service providers that offer three digital wireless handset models per air interface must offer at least one compliant model. 47 C.F.R. § 20.19(e).

⁶ See *Amendment of the Commission’s Rules Governing Hearing Aid-Compatible Mobile Handsets*, First Report and Order, 23 FCC Rcd 3406 (2008) (“*Hearing Aid Compatibility First Report and Order*”), Order on Reconsideration and Erratum, 23 FCC Rcd 7249 (2008).

⁷ See *Hearing Aid Compatibility First Report and Order*, 23 FCC Rcd at 3443 ¶ 91.

⁸ *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16787 ¶ 89; see also *Wireless Telecommunications Bureau Announces Hearing Aid Compatibility Reporting Dates for Wireless Carriers and Handset Manufacturers*, Public Notice, 19 FCC Rcd 4097 (Wireless Tel. Bur. 2004).

⁹ See *Hearing Aid Compatibility First Report and Order*, 23 FCC Rcd at 3445-46 ¶¶ 97-99.

¹⁰ *Id.* at 3446 ¶ 99.

¹¹ TCT Mobile holds equipment certifications for numerous digital wireless handsets. See, e.g., FCC ID RAD111 (granted 4/24/2009); FCC ID RAD104 (granted 04/13/2009); FCC ID RAD084 (granted 12/24/2008); FCC ID RAD060 (granted 08/01/2007); FCC ID RAD054 (granted 04/30/2007); FCC ID RAD036 (granted 11/07/2006); FCC ID RAD034 (granted 07/27/2006); FCC ID RAD014 (granted 09/22/2005).

¹² Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission to Mr. Gong Zhizhou, TCT Mobile Ltd. (Sep. 30, 2009), with carbon copy to Mr. Li Dongshen, Chairman, TCL Communication Technology Holdings, Ltd. (“LOI”).

for TCT Mobile was returned undelivered;¹³ similarly, an attempt to deliver a copy to the fax number on file for TCT Mobile was unsuccessful. The copy of the LOI delivered to the corporate parent was confirmed by Federal Express tracking as having been received on October 16, 2009. To date, the Division has received no response to the LOI, and no hearing aid compatibility status reports have been filed by TCT Mobile.

III. DISCUSSION

A. Failure to File Timely Hearing Aid Compatibility Status Reports

6. Section 20.19(i)(1) of the Rules requires handset manufacturers to file hearing aid compatibility status reports initially under the current rules on January 15, 2009 (covering the six-month period ending December 31, 2008) and then annually beginning July 15, 2009.¹⁴ These reports are necessary to enable the Commission to perform its enforcement function and evaluate whether TCT Mobile is in compliance with Commission mandates that were adopted to facilitate the accessibility of hearing aid-compatible wireless handsets. These reports also provide valuable information to the public concerning the technical testing and commercial availability of hearing aid-compatible handsets. To date, Commission records show no status reports on file for TCT Mobile. Accordingly, we find that TCT Mobile failed to file two hearing aid compatibility status reports in apparent willful¹⁵ and repeated¹⁶ violation of the requirements set forth in Section 20.19(i)(1) of the Rules.

B. Failure to Respond to the LOI

7. We also find that TCT Mobile's failure to respond to the Division's LOI constitutes an apparent willful violation of a Commission order. Sections 4(i), 4(j), and 403 of the Act afford the Commission broad authority to investigate the entities it regulates. Section 4(i) authorizes the Commission to "issue such orders, not inconsistent with this Act, as may be necessary in the execution of its functions,"¹⁷ and Section 4(j) states that "the Commission may conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice."¹⁸ Likewise, Section 403 grants the Commission "full authority and power to institute an inquiry, on its own motion ... relating to the enforcement of any of the provisions of this Act."¹⁹ Numerous FCC decisions have reaffirmed the Commission's authority to investigate potential misconduct and to punish those that disregard

¹³ We note that TCT Mobile is an ongoing concern and in the past year has received numerous grants of equipment certification from the Commission. The Bureau's LOI was sent to the address set forth by the company in its applications for those authorizations.

¹⁴ 47 C.F.R. § 20.19(i)(1).

¹⁵ Section 312(f)(1) of the Act defines "willful" as "the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law. 47 U.S.C. § 312(f)(1). The legislative history of Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act, H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982), and the Commission has so interpreted the term in the Section 503(b) context. *See Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 ¶ 5 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) ("*Southern California*"); *see also Telrite Corporation*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 7231, 7237 ¶ 12 (2008); *Regent USA*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 10520, 10523 ¶ 9 (2007); *San Jose Navigation, Inc.*, Forfeiture Order 22 FCC Rcd 1040, 1042 ¶ 9 (2007).

¹⁶ Section 312(f)(2) of the Act provides that "[t]he term 'repeated' ... means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day." 47 U.S.C. § 312(f)(2). *See, e.g., Callais Cablevision, Inc., Grand Isle, Louisiana*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362 ¶ 10 (2001).

¹⁷ 47 U.S.C. § 154(i).

¹⁸ 47 U.S.C. § 154(j).

¹⁹ 47 U.S.C. § 403.

Commission inquiries.²⁰

8. Congress has directed the Commission to “ensure reasonable access to telephone service by persons with impaired hearing.”²¹ In furtherance of that mission, the Division’s LOI directed TCT Mobile to provide, by October 30, 2009, certain information and documents regarding the company’s compliance with reporting requirements applicable to providers of hearing aid-compatible handsets. Federal Express tracking services confirmed that TCT Mobile received the Division’s LOI, through its corporate parent TCL Communication Holdings, Ltd., on October 16, 2009. To date, the Division has received no response to its communication. Accordingly, we find that TCT Mobile apparently willfully violated a Commission order by failing to provide the information requested by the Division.

C. Proposed Forfeiture

9. Under Section 503(b)(1)(B) of the Act, any person who is determined by the Commission to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.²² To impose such a forfeiture penalty, the Commission must issue a notice of apparent liability and the person against whom such notice has been issued must have an opportunity to show, in writing, why no such forfeiture penalty should be imposed.²³ The Commission will then issue a forfeiture if it finds by a preponderance of the evidence that the person has violated the Act or a Commission rule.²⁴ We conclude under this standard that TCT Mobile is apparently liable for forfeiture for its apparent willful and repeated failure to file the required status reports in violation of Section 20.19(i)(1) of the Rules and for its apparent willful violation of a Commission order to provide information.

10. The Commission’s *Forfeiture Policy Statement* and Section 1.80(b) of the Rules set a base forfeiture amount of \$3,000 for the failure to file required forms or information.²⁵ While the base forfeiture requirements are guidelines lending some predictability to the forfeiture process, the Commission retains the discretion to depart from these guidelines and issue forfeitures on a case-by-case basis under its general forfeiture authority contained in Section 503 of the Act.²⁶ In exercising such authority, we are required to take into account “the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability

²⁰ See, e.g., *Connect Paging, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 22 FCC Rcd 6303, 6306 (Enf. Bur. 2007) (proposing forfeiture of \$4,000 for failure to respond to an LOI); *Digital Antenna, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 23 FCC Rcd 7600, 7602 (Enf. Bur., Spectrum Enf. Div. 2008) (proposing forfeiture of \$11,000 for failure to provide a complete response to two letters of inquiry); *Hauppauge Computer Works, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 23 FCC Rcd 3684, 3688 (Enf. Bur., Spectrum Enf. Div. 2008) (proposing forfeiture of \$11,000 for failure to provide a complete response to two letters of inquiry).

²¹ 47 U.S.C. § 610(a).

²² 47 U.S.C. § 503(b)(1)(B); 47 C.F.R. § 1.80(a)(1).

²³ 47 U.S.C. § 503(b); 47 C.F.R. § 1.80(f).

²⁴ See, e.g., *SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591 ¶ 4 (2002).

²⁵ See *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17114 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) (“*Forfeiture Policy Statement*”); 47 C.F.R. § 1.80(b).

²⁶ See *Forfeiture Policy Statement*, 12 FCC Rcd at 17099 ¶ 22, 17101 ¶ 29 (1997); 47 C.F.R. § 1.80(b)(4) Note to paragraph (b)(4): Section II. Adjustment Criteria for Section 503 Forfeitures (“The Commission and its staff may use these guidelines in particular cases . . . [and] retain the discretion to issue a higher or lower forfeiture than provided in the guidelines, to issue no forfeiture at all, or to apply alternative or additional sanctions as permitted by the statute.”).

to pay, and such other matters as justice may require.”²⁷

11. We have exercised our discretion to set a higher base forfeiture amount for violations of the wireless hearing aid compatibility reporting requirements. In the *American Samoa Telecommunications Authority NAL*,²⁸ we found that status reports are essential to the implementation and enforcement of the hearing aid compatibility rules. The Commission relies on these reports to provide consumers with information regarding the technical specifications and commercial availability of hearing aid-compatible digital wireless handsets and to hold the digital wireless industry accountable to the increasing number of hearing-impaired individuals.²⁹ We noted that when setting an \$8,000 base forfeiture for violations of the hearing aid-compatible handset labeling requirements, the Commission emphasized that individuals with hearing impairments could only take advantage of critically important public safety benefits of digital wireless services if they had access to accurate information regarding hearing aid compatibility features of handsets.³⁰ We also noted that the Commission has upwardly adjusted the base forfeiture when noncompliance with filing requirements interferes with the accurate administration and enforcement of Commission rules.³¹ Because the failure to file hearing aid compatibility status reports implicates similar public safety and enforcement concerns, we exercised our discretionary authority and established a base forfeiture amount of \$6,000 for failure to file a hearing aid compatibility report.³² Consistent with *ASTCA*, we believe the established \$6,000 base forfeiture for each hearing aid compatibility reporting violation should apply here, for an aggregate forfeiture of \$12,000 (\$6,000 *2 reporting violations).

12. Failure to file these reports, as is the case here, can have an adverse impact on the Commission’s ability to ensure the commercial availability of hearing aid-compatible digital wireless handsets, to the detriment of consumers. Accordingly, we propose a forfeiture of \$12,000 against TCT Mobile for apparently willfully and repeatedly failing to file the January 15, 2009 and the July 15, 2009 hearing aid compatibility status reports in violation of Section 20.19(i)(1) of the Rules.

13. Turning to TCT Mobile’s failure to respond to the LOI, the Commission’s *Forfeiture Policy Statement* and Section 1.80 of the Rules also establish a base forfeiture amount of \$4,000 for failure to respond to Commission communications.³³ TCT Mobile’s failure to respond to the Division’s LOI has hindered our investigation of the company’s compliance with regulations that ensure the availability of hearing aid-compatible handsets. Prompt and complete responses to letters of inquiry and other Bureau communications are essential to the Commission’s enforcement function.

14. Consistent with precedent in similar cases where a company failed to respond to a Bureau directive to provide certain information or documents,³⁴ we find that TCT Mobile’s failure to respond to the Division’s LOI in this instance warrants assessment of the base forfeiture amount. We therefore propose a forfeiture in the amount of \$4,000 against TCT Mobile for failing to respond to a communication from the Commission.

²⁷ 47 U.S.C. § 503(b)(2)(E); 47 C.F.R. § 1.80(b)(4).

²⁸ See *American Samoa Telecommunications Authority*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 16432 (Enf. Bur., Spectrum Enf. Div. 2008), *response received* (“*ASTCA NAL*”).

²⁹ *Id.* at ¶ 10.

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ *Forfeiture Policy Statement*, 12 FCC Rcd at 17114; 47 C.F.R. § 1.80(b)(4).

³⁴ See, e.g., *Connect Paging, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 22 FCC Rcd 6303 (Enf. Bur. 2007) (proposing forfeiture of \$4,000 for failure to respond to an LOI).

15. Thus, we propose a total forfeiture in the amount of \$16,000, \$12,000 for TCT Mobile's apparent willful and repeated failure to file required forms in violation of Section 20.19(i)(1) and \$4,000 for its apparent willful failure to respond to a communication from the Commission.

IV. ORDERING CLAUSES

16. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act, and Section 1.80 of the Rules, and the authority delegated by Sections 0.111 and 0.311 of the Rules, TCT Mobile, Ltd. is **NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** in the amount of sixteen thousand dollars (\$16,000) for its failure to file required hearing aid compatibility status reports in willful and repeated violation of Section 20.19(i)(1) of the Rules and for its willful violation of a Commission order.

17. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Rules, within thirty (30) days of the release date of this Notice of Apparent Liability for Forfeiture, TCT Mobile **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

18. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures. TCT Mobile will also send electronic notification on the date said payment is made to JoAnn Lucanik at JoAnn.Lucanik@fcc.gov and to Kevin M. Pittman at Kevin.Pittman@fcc.gov.

19. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to Sections 1.80 (f)(3) and 1.16 of the Rules. The written statement must be mailed to the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, ATTN: Enforcement Bureau – Spectrum Enforcement Division, and must include the NAL/Acct. No. referenced in the caption. The statement should also be e-mailed to JoAnn Lucanik at JoAnn.Lucanik@fcc.gov and to Kevin M. Pittman at Kevin.Pittman@fcc.gov.

20. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

21. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by Federal Express to TCT Mobile Limited, 4/F, South Building, No. 2966, Jinke Road, Zhangjiang High-Tech Park, Pudong, Shanghai 201203, People's Republic of China, and shall also be sent to TCL Communication Technology Holdings, Ltd., 15/F, TCL Tower, Gaoxin Nanxi Road, Nanshan District, Shenzhen, Guangdong 518057, People's Republic of China.

FEDERAL COMMUNICATIONS COMMISSION

Kathryn S. Berthot
Chief, Spectrum Enforcement Division
Enforcement Bureau